

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

JOCELYNNE FALLGATTER and)	Case No. 04-3-0021
JEFF KIRKMAN,)	
)	(<i>Fallgatter/Kirkman</i>)
Petitioners <i>pro se</i> ,)	
)	ORDER RESCINDING
v.)	INVALIDITY and FINDING
)	COMPLIANCE [Re: Ordinance
CITY OF SULTAN,)	Nos. 853-04 and 854-04]
)	
Respondent,)	

I. BACKGROUND

On June 13, 2005, the Board issued its Final Decision and Order (**FDO**) in CPSGMHB Case No. 04-3-0021. In the FDO, the Board invalidated the challenged Ordinances¹ – Ordinance Nos. 853-04 and 854-04. The FDO provided in relevant part:

- The Board finds Ordinance Nos. 853-04 and 854-04 **noncompliant** with RCW 36.70A.130(1). The Ordinances are **remanded** to the City of Sultan with direction to take legislative action to achieve the internal consistency requirements of RCW 36.70A.070 as interpreted and set forth in this Order.
- The Board establishes **November 17, 2005**, as the deadline for the City of Sultan to take appropriate legislative action.

....

- Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. January 5, 2006**, at the Board’s offices. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. *If the City of Sultan takes the required legislative action prior to the November 17, 2005, deadline set forth in this Order, the City may file a motion with the Board requesting an adjustment to this compliance schedule.*

FDO, at 22-23 (emphasis supplied).

¹ “In light of the inconsistencies between the City of Sultan’s 2004 Plan [Update] and the provisions of the two noncompliant Ordinances, and the internal inconsistencies between the noncompliant Ordinances, and the problem of projects vesting in these noncompliant provisions of the City of Sultan’s development regulations, the Board finds and concludes that the continued validity of the amendments adopted by Ordinance Nos. 853-04 and 854-04 substantially interferes with Goals 9 and 12 – RCW 36.70A.020(9) and (12). ... Therefore, the Board enters a **determination of invalidity** with respect to Ordinance Nos. 853-04 and 854-04.” FDO, at 22.

On October 19, 2005, the Board received from the City of Sultan the following filings:

- Statement of Actions Taken to Comply
- Ordinance 885-05, repealing Ordinance 853-04
- Ordinance 886-05, repealing Ordinance 854-04
- Compliance Index
- Motion for Adjustment in Compliance Schedule

The Board issued two orders amending the compliance schedule, first to allow for earlier resolution of the matter and second for the convenience of counsel for Respondent. The Board received no submissions from Petitioners.

The Board conducted the Compliance Hearing on November 9, 2005, at 10:00 a.m. Pursuant to the stipulation of the parties, the hearing was held by telephone conference call. Board member Margaret Pageler presided, and Board members Bruce Laing and Ed McGuire attended. Attorney Thom Graafstra and City Administrator Rick Cisar participated for the City of Sultan. Petitioners Jocelynne Fallgatter and Jeff Kirkman both attended.

The parties agreed that Ordinance Nos. 853-04 and 854-04 were repealed by Ordinance Nos. 885-05 and 886-05 and that Petitioners' challenge to these ordinances is resolved.

The Board orally indicated its intent to enter an order rescinding invalidity and finding compliance.

II. FINDING OF COMPLIANCE AND RESCISSION OF INVALIDITY

Based upon review of the Statement of Actions Taken to Comply, the City's adoption of Ordinance Nos. 885-05 and 886-05, and the stipulation of the parties at the Compliance Hearing, the Board finds:

1. Ordinance Nos. 853-04 and 854-04 are repealed by Ordinance Nos. 885-05 and 886-05.
2. By repealing Ordinance Nos. 853-04 and 854-04, the City of Sultan has complied with the goals and requirements of the GMA with respect to these ordinances, as set forth in the Board's Final Decision and Order in this matter. The Board therefore enters a Finding of Compliance for the City of Sultan.
3. Further, because Ordinance Nos. 853-04 and 854-04 have been repealed, there is no longer a basis for invalidity; consequently, the Board's Determination of Invalidity, as set forth in the Final Decision and Order, is rescinded.

III. ORDER

Based upon review of the GMA, the Final Decision and Order in this matter, the Statement of Actions Taken to Comply, and on the stipulation of the parties at the Compliance Hearing, the Board ORDERS:

CPSGMHB Case No. 04-3-0021, *Fallgatter/Kirkman v. City of Sultan*, is **closed**. The City of Sultan adoption of Ordinance Nos. 885-05 and 886-05 repealing Ordinance Nos. 853-04 and 854-04 corrects the deficiencies found by the Board and **complies** with the goals and requirements of the GMA as set forth in the Board's June 13, 2005, Final Decision and Order. The Board finds that its order of invalidity is now moot and therefore **rescinds the determination of invalidity**. The Board therefore enters a **Finding of Compliance** for the City of Sultan with respect to the Petitioners' challenge.

So ORDERED this 14th day of November 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order, as specified by RCW 36.70A.300, unless a party files a motion for reconsideration pursuant to WAC 242-02-832.